



# SENATE BILL 65, 86<sup>th</sup> Legislature, Regular Session

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# Course Outline and Objectives

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- What is Senate Bill (SB) 65?
- SB65 Review
  - How to read a bill
  - Section review
- SB65 – What does it mean for Me?
  - SB65 – Review of the SB65 Implementation Guide
- Summary
- Other Bills of Interest
  - House Bill 1, General Appropriations Act, Article IX, Section 17.13 – Reporting on Interagency Contracts
  - House Bill 3834 – Cybersecurity Training Requirements
  - Senate Bill 943 – Disclosure of Contracting Information



# What Is Senate Bill (SB) 65?

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- **SB65, Nelson, 86<sup>th</sup> Regular Session**

- This is the procurement and contracting bill produced this past session, authored by Senator Jane Nelson.
- Senator Nelson routinely authors procurement and contracting bills, most notably SB20 from the 84<sup>th</sup> Regular Session.
- Senator Nelson's goal for authoring these bills is to address perceived deficiencies in state agency and publicly funded university procurement and contracting practices.



# Review of SB65 by Section

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## ■ **How to Read a Bill**

- Bill number is in upper right hand corner
- When discussing bills, it is helpful to reference the legislative session that produced the bill, as there are duplicate bill numbers in every session. In this case, the correct reference would be "SB65 of the 86<sup>th</sup> Regular Session," or "SB65 86(R)"
- First line states what the bill relates to
- Each section will reference a specific statute from the applicable code that the bill will affect
- New language to the code that the bill affects is underlined; deleted language is ~~struckthrough~~



# Review of SB65 by Section

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## ■ Section Review

- Section 1: Tex. Gov't Code §441.1855, Retention of Contract and Related Documents by State Agencies
  - This section now requires that a state agency retain “contract solicitation documents” that are electronic documents in an electronic form.
  - “Contract Solicitation document” includes any document, whether in paper form or electronic form, that is used by a state agency to evaluate responses to a competitive solicitation for a contract issued by the agency.
  - “Electronic document” means information that is created, generated, sent, communicated, received, or stored by electronic means; or the output of a word processing, spreadsheet, presentation, or business productivity application.



# Review of SB65 by Section

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## ■ Section Review

- Section 2: Tex. Gov't Code §2054.003, Definitions
  - This section **changes the monetary threshold** in the definition of a major information resources project (**MIRP**) from development costs exceeding \$1 million **to development costs exceeding \$5 million.**



# Review of SB65 by Section

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## ■ Section Review

- Section 3: Tex. Gov't Code §2054.055, Performance Report
  - This section **deletes** Subsections (12) and (13) of Section 2054.055(b), that required the Department of Information Resources (DIR):
    - (12) examine major information resources projects completed in the previous state fiscal biennium to determine the performance of the implementing state agency, cost and value effectiveness, timeliness, and other performance criteria necessary to assess the quality and value of the investment; and
    - (13) examine major information resources projects after the second anniversary of the project's completion to determine progress toward meeting performance goals and operating budget savings.



# Review of SB65 by Section

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## ■ Section Review

- Section 4: Tex. Gov't Code §2054.1181, Oversight of Major Information Resources Projects (MIRP)
  - This section requires additional oversight services by DIR for MIRPs (remember, now defined as development costs exceeding \$5M) selected for DIR oversight by the governor, lieutenant governor, or speaker of the house; and
  - This section requires that MIRP contracts with a value of at least \$10 million cannot be amended if more than 10% over budget or 10% behind schedule without:
    - Conducting a cost-benefit analysis with respect to canceling or continuing the project; and
    - Submitting the cost-benefit analysis to the quality assurance team (QAT).





# Review of SB65 by Section

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## ■ Section Review

- Section 5: Tex. Gov't Code §2054.158, Quality Assurance Team; Duties
  - This section adds additional responsibilities to the QAT for MIRP oversight, specifically:
    - (b) The quality assurance team shall:
      - (1) develop and recommend policies and procedures to improve the development, implementation, and return on investment for state agency information resources technology projects;
      - (2) except as provided by Subsection (e), review a state agency's business case prepared for a major information resources project under Section 2054.303 and make recommendations to improve the implementation of the project;
      - (3) *no change*;



# Review of SB65 by Section

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## ■ Section Review

- Section 5: Tex. Gov't Code §2054.158, Quality Assurance Team; Duties (*continued*)
  - (4) review and provide recommendations on the final negotiated terms of a contract for the development or implementation of a major information resources project with a value of at least \$10 million; and
  - (5) provide a report to the governor, lieutenant governor, speaker of the house of representatives, and presiding officer of the standing committee of each house of the legislature with primary jurisdiction over appropriations by December 1 of each even-numbered year that includes:
    - (A) the performance indicator report required by Section 2054.159(a);
    - (B) a summary of any major issues identified in state agency reports submitted under Section 2054.159(f);
    - (C) an appendix containing any justifications submitted to the quality assurance team under Section 2054.160(d); and
    - (D) any additional information considered appropriate by the quality assurance team.



# Review of SB65 by Section

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## ■ Section Review

- Section 5: Tex. Gov't Code §2054.158, Quality Assurance Team; Duties (*continued*)
  - (d) The comptroller by rule shall develop guidelines for the additional or reduced monitoring of major information resources projects and associated contracts of state agencies during the periods described by Sections 2261.258(c)(2)(A), (B), and (C).
  - (e) The quality assurance team may waive the review authorized by Subsection (b)(2) for any project for which the team determines that a waiver of the review is appropriate because of the project's associated risk.



# Review of SB65 by Section

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## ■ Section Review

- Section 6: Tex. Gov't Code §2054.159, Major Information Resources Project Monitoring
  - This section adds Subsections (f) and (g):
    - (f) For each major information resources project, a state agency shall provide the quality assurance team any verification and validation report or quality assurance report related to the project not later than the 10th day after the date the agency receives a request for the report.
    - (g) The quality assurance team may request any information necessary to determine a major information resources project's potential risk.



# Review of SB65 by Section

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## ■ Section Review

- Section 7: Tex. Gov't Code §2054.160, Review of Contract for Major Information Resources Project
  - This section amends Chapter 2054, Subchapter G of the Texas Government **to add Section 2054.160** as follows:
    - Sec. 2054.160. REVIEW OF CONTRACT FOR MAJOR INFORMATION RESOURCES PROJECT. (a) For each contract for the development or implementation of a major information resources project with a value of at least \$10 million, a state agency shall:
      - (1) submit the proposed terms of the contract to the quality assurance team before the start of negotiations; and
      - (2) submit the final negotiated unsigned contract to the quality assurance team for review under Section 2054.158(b)(4).



# Review of SB65 by Section

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## ■ Section Review

- Section 7: Tex. Gov't Code §2054.160, Review of Contract for Major Information Resources Project (*continued*)
  - (b) After the quality assurance team makes a recommendation under Section 2054.158(b)(4), a state agency shall:
    - (1) comply with the recommendation; or
    - (2) submit to the quality assurance team a written explanation regarding why the recommendation is not applicable to the contract under review.
  - (c) Before amending a contract related to a major information resources project, a state agency must notify the governor, lieutenant governor, speaker of the house of representatives, presiding officer of the standing committee of each house of the legislature with primary jurisdiction over appropriations, and quality assurance team if:
    - (1) the total value of the amended contract exceeds or will exceed the initial contract value by 10 percent or more; or
    - (2) the amendment requires the contractor to provide consultative services, technical expertise, or other assistance in defining project scope or deliverables.
  - (d) A state agency shall provide to the quality assurance team a justification for an amendment subject to Subsection (c).



# Review of SB65 by Section

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## ■ **Section Review**

- Section 8: Tex. Gov't Code §2054.301, Applicability
  - This section amends Section 2054.301 to limit the requirements of Subchapter J, Texas Project Delivery Framework, to apply only to a major information resources project.



# Review of SB65 by Section

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## ■ Section Review

- Section 9: Tex. Gov't Code §2054.302, Guidelines; Forms
  - This section amends Subsection (b) to delete the requirement for DIR's consultation with the Legislative Budget Board and the State Auditor's Office in developing and providing guidelines and forms for the documents required by Subchapter J, Texas Project Delivery Framework (remember subchapter now only applies to MIRPs)





# Review of SB65 by Section

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## ■ Section Review

- Section 10: Tex. Gov't Code §2054.303, Business Case and Statewide Impact Analysis
  - This section amends Subsections (a) and (c) to delete the reference to major contracts (remember Subchapter J now applies only to MIRPs) and to specify that only state agencies that have been assigned a monitoring rating under Section 2261.258(a)(1) of the Government Code must prepare a statewide impact analysis of the project's effect on the state's common information resources infrastructure and, if requested by QAT, a technical architectural assessment of the project; the amendment eliminates the requirement that the state agency prepare the technical assessment in consultation with DIR; and
  - This section adds Subsection (d) to require that agencies comply with recommendations made by QAT or provide a written explanation regarding why the recommendation is not applicable (the QAT review process is now similar to the contract advisory team (CAT) review process) .



# Review of SB65 by Section

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## ■ **Section Review**

- Section 11: Tex. Gov't Code §2054.304, Project Plans
  - This section amends Subsections (a) and (b) to delete the reference to major contracts (remember Subchapter J now only applies to MIRPs)



# Review of SB65 by Section

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## ■ Section Review

- Section 12: Tex. Gov't Code §2054.305, Procurement Plan and Method for Monitoring Contracts
  - This section amends Section 2054.305 to apply only to MIRPs with a value of at least \$10 million; and
  - This section amends Section 2054.305 to require that state agencies develop a procurement plan prior to solicitation for MIRPs with a value of at least \$10 million that is consistent with any acquisition plan provided in the State Procurement and Contract Management Guide. (Procurement plans must have anticipated service levels and performance standards for each contractor and a method to monitor changes to the scope of each contract.)



# Review of SB65 by Section

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## ■ Section Review

- Section 13: Tex. Gov't Code §2054.307, Approval of Documents and Contract Changes
  - This section amends Subsection (a) to allow a state agency's executive director **or the executive director's designee** to approve MIRP documents under Subchapter J.



# Review of SB65 by Section

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## ■ Section Review

- Section 14: Tex. Gov't Code §2102.005, Internal Auditing Required
  - This section adds Subsection (b) concerning an agency's annual internal auditing plan:
    - (b) In conducting the internal auditing program under Subsection (a), a state agency shall consider methods for ensuring compliance with contract processes and controls and for monitoring agency contracts.



# Review of SB65 by Section

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## ■ Section Review

- Section 15: Tex. Gov't Code §2155.089, Reporting Vendor Performance
  - This section now requires more frequent vendor performance reporting to the Comptroller's Vendor Performance Tracking System (VPTS) for any contract with a value that exceeds \$5 million, specifically:
    - This section requires that a state agency review the vendor's performance at least once each year during the term of the contract;
    - This section requires that a state agency review the vendor's performance at each key milestone identified in the contract; and
    - This section prohibits a state agency from extending a contract until the agency reports the results of each review in the VPTS.



# Review of SB65 by Section

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## ■ Section Review

- Section 15: Tex. Gov't Code §2155.089, Reporting Vendor Performance (*continued*)

- This means that if you are the contract manager or project manager for an applicable contract,

**YOU**

- Are responsible for reporting vendor performance to the Comptroller's Vendor Performance Tracking System;
- Are responsible for the establishment of milestones in your contract (consult with your assigned contracting attorney for assistance developing milestones); and
- Are the individual that the State Auditor's Office will look to as the responsible party.



# Review of SB65 by Section

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## ■ **Section Review**

- Section 16: Tex. Gov't Code §2155.144, Procurements by Health and Human Services Agencies
  - This section amends HHSC's delegated procurement authority by adding delegated authority to procure goods and services related to construction or deferred maintenance for state hospitals and state supported living centers.





# Review of SB65 by Section

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## ■ **Section Review**

- Section 17: Tex. Gov't Code §2252.908, Disclosure of Interested Parties
  - This section expands the requirement to disclose interested parties to include contracts of a governmental entity or state agency that is for services that would require a person to register as a lobbyist under Government Code Chapter 305.



# Review of SB65 by Section

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## ■ **Section Review**

- Section 18: Tex. Gov't Code §2254.024, Exemptions  
(*Consulting Services*)
  - This section removes the reference to Section 2254.030. (Section 2254.030 is amended by Section 21 of SB65 discussed later in this training).



# Review of SB65 by Section

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## ■ Section Review

*Sections 19-22 remove the requirement to post to the Texas Register under Texas Government Code 2254. Now all solicitation types, except for RFAs, must be posted to the ESBD.*

- Section 19: Tex. Gov't Code §2254.029, Publication in State Business Daily (ESBD) Before Entering Into a Major Consulting Services Contract
- This section changes the heading of Section 2254.029 by deleting the reference to the *Texas Register* and adding "State Business Daily":
  - PUBLICATION IN STATE BUSINESS DAILY [TEXAS-REGISTER] BEFORE ENTERING INTO MAJOR CONSULTING SERVICES CONTRACT
- A "major consulting services contract" means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000, or \$25,000 for an institution of higher education other than a public junior college.



# Review of SB65 by Section

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## ■ Section Review

- Section 20: Tex. Gov't Code §2254.029, Publication in State Business Daily (ESBD) Before Entering Into a Major Consulting Services Contract
  - This section adds the requirement to post invitations for major consulting services contracts on the State Business Daily (ESBD) and deletes the requirement to file with the Secretary of State for publication in the *Texas Register*.
  - This section also requires that the posting on the ESBD be governed by the notice requirements of Section 2155.083\* of the Government Code.\*

*\*Section 2155.083 covers the minimum posting requirements for Formal Procurements*



# Review of SB65 by Section

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## ■ Section Review

- Section 21: Tex. Gov't Code §2254.030, Required Disclosure and Itemization of Certain Expenditures Relating to Lobbying Activities After Entering Into a Consulting Services Contract
  - This section deletes all of Section 2254.030 and adds new language concerning reporting and disclosure requirements by political subdivisions for certain expenditures related to lobbying activities:
    - The political subdivision must prominently display on its website certain contract information, a list of all legislation advocated for by all parties (subcontractors as well), and proposed budgets for these contracted services.



# Review of SB65 by Section

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## ■ Section Review

- Section 22: Tex. Gov't Code §2254.031, Renewal; Amendment; Extension (*Major Consulting Services*)
  - This section adds the requirement that renewals, amendments, or extensions of major consulting contracts (>\$15K) follow the same requirements for initial procurement of a major consulting services contract:
    - Notify LBB and governor's Budget and Planning Office that agency intends to renew, amend, or extend a contract with a consultant;
    - Obtain finding of fact from governor's Budget and Planning Office; and
    - Publication on ESBD for at least 21 days



# Review of SB65 by Section

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## ■ Section Review

- Section 23: Tex. Gov't Code §§ 2261.0525 and 2261.054
  - Adds Section 2261.0525, Certification of Vendor Assessment Process
    - This section adds requirements that before a state agency may award a contract the agency procurement director must review all process documents used by the agency to evaluate that each response was evaluated according to the published evaluation criteria; and certify in writing that:
      - The agency assessed each vendor according to the evaluation criteria published in the solicitation, or, if applicable, the written evaluation criteria established by the agency; and
      - The final calculation and scoring of responses was accurate;
    - This section requires the agency to justify in writing any change in scoring of a vendor that occurs following the initial assessment and scoring of the responses; and
    - The procurement director must review the written statement justifying any change in scoring and certify that the change of the scoring was appropriate.



# Review of SB65 by Section

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## ■ **Section Review**

- Section 23: Tex. Gov't Code §§ 2261.0525 and 2261.054  
*(continued)*
  - Adds Section 2261.054, Statement Regarding Vendor Selection Required for Certain Contract Awards
    - This section requires written documentation in the contract file the reasons for making an award to a vendor who did not receive the highest score in an assessment process certified under Section 2261.0525.





# Review of SB65 by Section

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## ■ Section Review

- Section 24: Tex. Gov't Code Chapter 2261, Subchapter E, Contractor Oversight and Liability
  - This section amends heading to Subchapter E to add "and Liability":  
"SUBCHAPTER E. CONTRACTOR OVERSIGHT AND LIABILITY"



# Review of SB65 by Section

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## ■ Section Review

- Section 25: Tex. Gov't Code §2261.204, Liability Provisions
  - This section adds the requirement to include in the contract file a written explanation of the agency's decision to include or not include in the contract a provision for liquidated damages or another form of liability for damages caused by the contractor;
  - The written explanation must include a justification for any provision in the contract that limits the liability of a contractor for damages;
  - If a contract extension modifies a provision for liquidated damages or another provision relating to a contractor's liability for damages, the agency must amend the written explanation or justification; and
  - This requirement only applies to contracts subject to Chapter 2261.



# Review of SB65 by Section

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## ■ **Section Review**

- Section 26: Tex. Gov't Code §2261.251, Applicability of Subchapter
  - This section deletes the reference to the Teacher Retirement System (TRS).



# Review of SB65 by Section

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## ■ **Section Review**

- Section 27: Tex. Gov't Code §2261.254, Contracts with Value Exceeding \$1 Million
  - This section adds delegation and signature authority for contracts with a value exceeding \$1 million to deputy executive directors.



# Review of SB65 by Section

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## ■ Section Review

- Section 28: Tex. Gov't Code §§2261.258 and 2261.259
  - Adds Section 2261.258, Monitoring Assessment by State Auditor
    - This section adds a new chapter of responsibility and oversight by the State Auditor's Office (SAO)
    - Requires the SAO, before July 1<sup>st</sup> of each year, to assign one of the following ratings to the 25 largest state agencies as determined by the LBB:
      - additional monitoring warranted;
      - no additional monitoring warranted; or
      - reduced monitoring warranted.



# Review of SB65 by Section

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## ■ **Section Review**

- Section 28: Tex. Gov't Code §§2261.258 and 2261.259  
(*continued*)
  - The criteria used by the SAO to make the determination:
    - Audits of agency contracts and contract processes and controls conducted by the agency's OIA or by the SAO;
    - Results of a purchase audit conducted by the CPA;
    - Information reported by the QAT;
    - Information reported by CAT relating to reviews;
    - Information related to agency findings from a review conducted by the LBB or Sunset Advisory Commission;
    - The agency's self-reported improvements to the agency's contracting processes; and
    - Any additional internal analysis provided by the agency.



# Review of SB65 by Section

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## ■ **Section Review**

- Section 28: Tex. Gov't Code §§2261.258 and 2261.259  
*(continued)*
  - SAO must report by September 1 of each year to the CPA and DIR each agency's assigned rating:
    - SAO may stipulate any of the following in regards to additional or reduced monitoring:
      - contract solicitation and development;
      - contract formation and award; and/or
      - contract management and termination.
  - In consultation with CAT, CPA by rule must develop guidelines for the additional or reduced monitoring for contracts subject to CAT review;
  - In consultation with QAT, DIR by rule must develop guidelines for the additional or reduced monitoring for contracts subject to QAT review;
  - The SAO may request information from the agency, CAT, and/or QAT to assist in the agency's rating designation; and
  - The SAO must include these duties in the audit plan approved by the legislative audit committee under Gov't Code §321.013.



# Review of SB65 by Section

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## ■ Section Review

- Section 28: Tex. Gov't Code §§2261.258 and 2261.259  
*(continued)*
  - Adds Section 2261.259, Electronic Compliance Submissions
    - This section allows a state agency that uses the centralized accounting and payroll system or an alternative computer software system for compliance requirements related to the procurement of goods or services to electronically submit to the CPA using that computer software system any written justification, verification, notification, or acknowledgement required under Chapter 2261 or Subchapter B of Chapter 2155.





# Review of SB65 by Section

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## ■ Section Review

- Section 29: Tex. Gov't Code §§ 2262.053 and 2262.056
  - Adds Section 2262.053, Contract File Checklist; Certification of Agency Compliance:
    - Requires the agency to include in the contract file for each of its contracts a checklist to ensure the agency's compliance with state laws and rules pertaining to the acquisition of goods and services by the agency;
    - The Comptroller must periodically update a model checklist, may adopt rules pertaining to this requirement, and the checklist must address each stage of the procurement process, and at a minimum, include a description of:
      - the documents required to be maintained during each stage of the procurement process; and
      - the procedures and documents that are required to be completed during the procurement process:
        - contract solicitation development;
        - contract formation and award; and
        - contract management;
      - A state agency may develop its own checklist, provided it is consistent with the CPA's model.



# Review of SB65 by Section

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## ■ Section Review

- Section 29: Tex. Gov't Code §§ 2262.053 and 2262.056  
(*continued*)
  - Adds Section 2262.056, Approval Required for Assignment of Services Contracts
    - This section prohibits the assignment of contracts and contractor's rights without approval of state agency; and
    - This section requires LBB notification of proposed assignment at least 14 days before the state agency rejects or approves the vendors proposed assignment if the contract:
      - is for a MIRP; or
      - involves storing, receiving, processing, transmitting, disposing of, or accessing sensitive personal information in a foreign country.



# Review of SB65 by Section

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## ■ **Section Review**

- Sections 30 Through 34:
  - Repeal of certain TGC chapters direction to CPA and DIR re implementation expectations, that the act takes effect for contracts solicited after 9/1, is applicable to renewals, extensions or modifications or change orders after 9/1, when the first report is due from the SAO, and act enactment (9/1/2019).



# CONGRATULATIONS!

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**You have just completed a bill analysis!**

**Welcome to State Government!**



# Review of SB65 Implementation Guide

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Review of the SB65 Implementation Guide.



# Summary

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- Use the Implementation Guide to assist you in interpreting the bill and how to implement the provisions and requirements.
  
- Resources:
  - SB65 Implementation Guide (Health and Human Services)
  - Texas Legislature Online: <https://capitol.texas.gov/> (text of bills from the 86<sup>th</sup> Legislature)



# Other Bills of Interest

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- House Bill 1, General Appropriations Act, Article IX, Section 17.13 – Reporting on Interagency Contracts
- House Bill 3834 – Cybersecurity Training Requirements
- Senate Bill 943 – Disclosure of Contracting Information
- HB 2826 – contingency fee contract void if not complied with TGC 2254
- HB2868 – Prof Srvcs now includes interior design
- HB3875 – AIS and MIRP systems must be capable of being deployed and run on cloud computing



# Other Bills of Interest (cont)

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- House Bill 793 - boycott on Israel application restricted to a contract with a governmental entity and a company with 10 or more FTE's and has a value of \$100K paid with public funds;
- House Bill 985 – public works contracts cannot discourage collective bargaining;
- Senate Bill 1370 – Legal Services new invoicing requirements;
- Senate Bill 20 – Human trafficking conviction contract prohibition;
- Senate Bill 241 – MIRP project plans to QAT no longer DIR.